

PSA Meeting U.S. Immigration Matters

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Important Disclaimer

Today's presentation is meant to be educational and informative in nature. I am not a licensed attorney. The information provided today is not legal advice and should not be construed as such. If you wish to receive legal advice, you should retain a licensed attorney who specializes in U.S. immigration law.



Dictionary

- ❖ USCIS – United States Citizenship & Immigration Services. Formerly known as the INS, USCIS is the agency responsible for processing immigration-related applications and petitions including H-1B petitions, F-1 OPT applications, and naturalization.
- ❖ DOL – Department of Labor. Gov't agency involved in Labor Condition Applications for H-1B and E-3 petitions, and PERM Labor Certification (required for certain green card cases).
- ❖ DOS – Department of State. Gov't agency responsible for visa issuance.
- ❖ CBP – Customs & Border Patrol. Gov't agency responsible for protecting US borders, including screening for admission at U.S. points of entry (land borders, airports, etc.)
- ❖ Visa – A travel document which allows the holder to apply for admission to the U.S. from abroad. The expiration date of the visa does not necessary match the expiration date of the person's lawful status/stay in the U.S.
- ❖ Immigration Status – The status held by non-US citizens/LPRs as evidenced by the I-94 card. The I-94 card is the guiding authority on the expiration of a person's lawful status/stay in the U.S.



Travel Issues

- ❖ To re-enter the U.S. after international travel, you must present a valid passport and visa*.
- ❖ If traveling to somewhere other than your home country, verify whether or not a visa is required to enter the 3rd country.
- ❖ To apply for a U.S. visa, you must apply at a U.S. Consulate outside the U.S. (does not have to be in your home country) and present the following:
 1. Valid Passport;
 2. Completed Form DS-160, Application to Nonimmigrant Visa;
 3. Proof of employment in the U.S. (copies of recent paystubs and Letter of Employment Verification suggested);
 4. Status documents:
 - a) H-1B: Form I-797 approval notice and I-129 Petition;
 - b) F-1: Form I-20 endorsed by university for travel within one year of re-admission, and if applicable, EAD card;
 - c) J-1: Form DS-2019 endorsed for travel within six months of re-admission

* When traveling from the US to Canada or Mexico for less than 30 days, then back to the US, it is not necessary to have a valid visa in your passport. To seek re-admission to the US, you must present a valid passport and proof of valid status in the US (i.e. I-94 Card, I-797, I-20, DS-2019).



Travel Issues (cont'd)

❖ Dual Intent versus Single (Non-immigrant) Intent

- H-1B is a dual intent visa. This means that although it is a nonimmigrant (temporary) visa status, having immigrant intent (intending to or actual filing for permanent residency) is not a bar to visa issuance nor does it invalidate existing an H-1B visa.
- F-1, J-1 and TN's are all single (non-immigrant) intent. This means that is that having immigrant intent is a bar to visa issuance; nor should those in F, J and TN status who have immigrant intent travel on existing visas.

❖ Evidencing Non-immigrant Intent

- Strong ties to home country (travel, family, bank accounts, home, job offer, etc.)

❖ Travel Restrictions During Green Card Process

- Applicants filing Form I-485, Application to Adjust Status, must be physically in the U.S. for the actual filing. Once USICS has received the application, international travel is permitted. Note that the applicant must present valid documents to re-enter the U.S. (Passport/Visa/status documents or Passport/Advance Parole.

❖ **Remember to contact the International Office IN ADVANCE of international travel to ensure you have the proper documents to re-enter. Do not wait until the last minute!**



H-1B Status

❖ Requirements

1. Specialty occupation (i.e. one which typically requires at least a bachelor's degree in a specific field.
2. Employer must meet prevailing wage requirements as evidenced by a certified Labor Condition Application
3. Employer must file a petition and obtain approval from USCIS.

❖ Period of Validity

- Dates of validity cannot exceed three years
- Limit of six years on total stay in the U.S. in H-1B status. Clock starts on first date in the U.S. in H-1B status (either beginning validity date on H-1B approval notice or date first entered the U.S. using H-1B visa.
- It is possible to recapture time spent outside the U.S. while holding H-1B status and add it back to six year limit of stay.

❖ Dependents

- Spouse and children under the age of 21 eligible for H-4 status. Not eligible for employment authorization.



H-1B Status (cont'd)

❖ Annual Quota / Usage

- 65,000 new H-1B numbers available every fiscal year with additional 20,000 for holders of US advanced degrees.
- Educational, governmental, and some research organizations are exempt from quota and can file H-1Bs year round.
- If you move from an exempt to a non-exempt employer, you will be subject to the quota and your H-1B, if approved, cannot have an effective date earlier than Oct. 1 of that fiscal year.
- H-1B extensions and amendments are not subject to the quota.

❖ Important Reminders

- H-1B status is specific to the employer, job location, and job duties. Immediately notify HR if any of these change.
- Valid status ends the date you are no longer performing productive services. There is no grace period.



F-1 Status

❖ Validity

- No limit on overall stay – Duration of Status.
- OPT: initially valid for 12 months. For those with STEM degrees, another 17 month of employment authorization can be granted if working for an employer enrolled in E-Verify.
- OPT and CPT require that job duties are directly relevant to degree field.
- Cannot have more than 90 days of unemployment during initial 12 months; cannot exceed 120 days during STEM extension, including any period of unemployment that occurred during first 12 months.
- 60 day grace period granted upon completion of studies or OPT.

❖ Dependents

- Spouse and children under the age of 21 eligible for H-4 status. Not eligible for employment authorization.



J-1 Status

❖ Validity

- 5 years for Research Scientists.
- Will not be given date-specific expiration dates on I-94 cards. Duration of Status (D/S).
- 30 day grace period at end of exchange visitor program.

❖ Dependents

- Spouse and children under the age of 21 eligible for J-2 status. Spouse eligible for employment authorization by submitting Form I-765, Application for Employment Authorization to USCIS. Must state that employment is not necessary to cover living expenses, but rather, will be used to vacations, cultural activities, etc.

❖ Two Year Home Residency Requirement

- Not all Js subject to this requirement. If you are subject, must return to home country for two years or obtain a waiver of 212(e) prior to moving to H-1B status or pursuing a green card.



U.S. Permanent Residence (a/k/a Green Card)

❖ Three main employment-based (EB) categories:

- ***EB-1*** – Extraordinary Ability
 – Outstanding Researcher
- ***EB-2*** – Advanced Degree
 – Exceptional Ability
- ***EB-3*** – Professionals, Skilled Workers



Employment-Based Cases & Numerical Limits

❖ *Numerical limits* on EB Categories

- ~ 40,000/year for EB-1, EB-2 & EB-3 each
- Possibility of flow-down of unused numbers
- Per country limit – 7% of worldwide limit

❖ Place in line determined by *priority date* (filing date of labor cert. or I-140 petition, if labor cert. exempt)

❖ Based on country of birth, not citizenship

❖ Can take advantage of cross-chargeability if spouse's country of birth is less backlogged.

❖ **EB-1** – current for all countries of birth

❖ **EB-2** – excess demand for China- and India-born (and, temporarily, for other countries, until October 1, 2012)

❖ **EB-3** – Backlogged until 2006 or earlier for all countries



U.S. Permanent Residence (cont'd)

❖ PR process normally a three step process:

1. Labor Certification - testing the local labor market to prove there is a not a minimally qualified US worker to perform the job duties.
2. I-140 Immigrant Visa Petition.
3. Adjustment of Status.

❖ Exemptions from Labor Certification:

1. Alien of Extraordinary Ability
2. Outstanding Researcher
3. National Interest Waiver (NIW)

❖ Foreign national can self petition for Extraordinary Ability and NIW. Outstanding Research and Labor Certification require employer to make an offer of permanent (no fixed term) employment.



Alien of Extraordinary Ability

❖ Very High Standard

- In small percentage at very top of the field; sustained international or national acclaim

❖ Review Steps

1. Is the applicant the recipient of a major prize or award (i.e. Nobel Prize); if not, does the applicant meet at least three of the 10 criteria; AND
2. Does the totality of the circumstances (qualitative analysis) prove that the applicant has extraordinary ability.

10 criteria:

- Awards for excellence
- Membership in organization requiring outstanding achievement
- Articles about employee
- Judging work of peers
- Original contributions of major significance
- Publications by employee
- Leading/critical role in organization with distinguished reputation
- High salary relative to peers
- Work displayed in artistic exhibitions*
- Commercial success in performing arts*
- *Comparable evidence



Outstanding Researcher

❖ Standards:

- Sustained national or international acclaim for one's research/scientific accomplishments
- Must be in full-time research position
- Must be employed by a research organization (R & D, academia, etc.)
- Must have 3 years of research experience. If all or part of those 3 years were during while a student, research during that time must be considered outstanding

❖ Review Steps

1. Does the applicant meet at least two of the 6 criteria; AND
2. Does the totality of the circumstances (qualitative analysis) prove that the applicant is nationally or internationally recognized for his/her research accomplishments

6 criteria:

- Major awards for outstanding achievement
- Membership in organization requiring outstanding achievement
- Articles about employee's research work
- Judging work of peers
- Original contributions to the field
- Publications by employee



National Interest Waiver

❖ Criteria

1. Applicant must qualify for EB-2 category (Advanced degree or bachelor's degree and 5+ years of experience or exceptional ability).
2. Employment must be an area of substantial intrinsic merit, benefit must be national in scope, and applicant must serve national interest to a substantially greater degree than U.S. worker with similar minimum qualifications.



Required Documentation for EB-1 and NIW Cases

- ❖ Expert Opinion Letters (these are not recommendation letters!)
 - 6-8 ideally.
 - Letters should be detailed and specific in regards to what your accomplishments are, why those accomplishments are different, groundbreaking, unique, etc.
 - Letter should be based on accomplishments to date, not on future promise.
 - Letters should not refer to you by first name, include any personal comments, or make reference to age (“young scientist”).
 - Letters should not be obtained from past or current employer, colleagues, thesis advisor, or anyone else to whom the USCIS will be able to draw a personal connection.
 - Sources for letters
 - Government agencies
 - Professional associations
 - Industry
 - Independent experts
 - Research collaborators at outside institutions



Documentation Required (cont'd)

- ❖ CV, list of publications, copies of degrees & transcripts
- ❖ Narrative summary of accomplishments
- ❖ Copies of publications & patents
- ❖ Citation list and, as appropriate, copies of citing articles
- ❖ Copies of press or articles about employee and/or work
- ❖ Copies of awards (plus criteria, significance, reputation)
- ❖ Membership documentation & membership criteria
- ❖ Peer reviewing of articles & judging awards/grants
- ❖ Impact factors of publishing & citing journals
- ❖ Conference participation (esp. as organizer or speaker)



Process for Initiating Cases

- ❖ For Argonne sponsorship, you must be in a regular (not temporary or term) position. Process begins with seeking and obtaining divisional approval.
- ❖ If you're going to self petition (Extraordinary Ability and NIW), you can choose to prepare and file case on your own or retain outside legal counsel. Fragomen, the law firm under contract with the Lab, will extend same fees to individuals as are charged the Lab.



Estimated Government Processing Times

- ❖ I-140 filed with the USCIS Nebraska Service Center – approximately 4 months. Extraordinary Ability and Outstanding Researcher eligible for premium processing; NIW is not.
- ❖ I-485 filed with the USCIS Nebraska Service Center – approximately 4 months.

NOTE: Government processing times are subject to frequent and unexplained changes that are out of Argonne's (and your) control. The times listed above are the government's published processing times as of July 2012.



Q & A

